

1991

Envirotech Corporation dba Eimco Process
Equipment Co., a Delaware Corporation v. G and
G Steel Corporation, a Utah corporation, Gerald A.
Callahan an individual, Glen O. Hansen, an
individual : Unknown

Utah Supreme Court

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Attorneys for Plaintiff.

Unknown.

Recommended Citation

Legal Brief, *Envirotech Corporation v. G and G Steel Corporation*, No. 910391.00 (Utah Supreme Court, 1991).
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IN THE SUPREME COURT OF THE STATE OF UTAH

ENVIROTECH CORPORATION dba)	
EIMCO PROCESS EQUIPMENT CO.,)	
a Delaware Corporation,)	
Plaintiffs, Appellee,)	
and Cross-Appellant,)	
vs.)	
G & G STEEL CORPORATION, a Utah)	Appellate Court No. 910391
corporation, GERALD A. CALLAHAN,)	C88-5429
an individual, GLEN O. HANSEN, an)	
individual,)	
Defendants,)	(Related Case No. 910224)
GERALD A. CALLAHAN,)	
Defendant and Appellant)	
and Cross-Appellee.)	

A P P E N D I X

JUDGMENT

FINDINGS OF FACT AND CONCLUSIONS OF LAW

TEMPORARY RESTRAINING ORDER

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06131

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE

ENVIROTECH CORPORATION, a	:	
Delaware corporation, d/b/a	:	
EIMCO PROCESS EQUIPMENT	:	
COMPANY,	:	
Plaintiff	:	JUDGMENT OF CONTEMPT
vs.	:	
	:	Civil No. C88-5429
G & G STEEL CORPORATION,	:	
a Utah corporation, GERALD	:	
A. CALLAHAN, an individual,	:	Judge J.A. Rokich
GLEN O. HANSEN, an individual,	:	
Defendants.	:	

This matter came before the court for hearing on the
ORDER TO SHOW CAUSE dated May 18, 1990 and on the RENEWED MOTION
FOR CONTEMPT dated May 16, 1990. The plaintiff appeared in the
person of its Vice President Jerry Boyd and by and through its
counsel Thomas J. Rossa and David T. Berry. The defendant GERALD

A. CALLAHAN (CALLAHAN) appeared in person and by and through his counsel George K. Fadel. The non-parties IONE CALLAHAN (IONE), DAVID VON MENDENHALL (MENDENHALL) and LENA BLOOMQUIST (BLOOMQUIST) also appeared in person and by and through their counsel George K. Fadel. The court having heretofore entered its FINDINGS OF FACT AND CONCLUSIONS OF LAW, it is now therefore

ORDERED AND JUDGED AND DECREED that:

1. This court has jurisdiction of this matter, of the party defendant CALLAHAN and the non-parties MENDENHALL, BLOOMQUIST and IONE.

2. The defendant GERALD A. CALLAHAN is in contempt of this court.

3. The defendant GERALD CALLAHAN shall forthwith pay to plaintiff the sum of FIVE THOUSAND AND NO/100 DOLLARS (\$5,000.00) as a fine for his contemptuous conduct; and plaintiff be and is hereby awarded judgment for the amount of said fine together with interest thereon at the legal rate until paid.

4. To purge himself of contempt, the defendant CALLAHAN shall forthwith cause the transfer of all the assets of C-H INDUSTRIES, INC. to plaintiff to be valued and applied to satisfaction of the FINAL JUDGEMENT herein.

5. CALLAHAN shall pay all costs and attorneys' fees of plaintiff attendant hereto. Plaintiff shall submit a bill of costs and a statement of its attorneys' fees within twenty (20) days hereof; and defendant CALLAHAN shall have ten (10) days thereafter to object.

6. The ORDER TO SHOW CAUSE of May 18, 1991 be and is hereby dismissed as to IONE, BLOOMQUIST and VON MENDENHALL.

DATED this 9 day of JULY 1991.

BY THE COURT

S/ John A. Rokich
Honorable John A. Rokich
District Judge

*Revised
7-9-91*

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE

ENVIROTECH CORPORATION, a
Delaware corporation, d/b/a
EIMCO PROCESS EQUIPMENT
COMPANY,

Plaintiff

vs.

G & G STEEL CORPORATION,
a Utah corporation, GERALD
A. CALLAHAN, an individual,
GLEN O. HANSEN, an individual,

Defendants.

FINDINGS OF FACT
AND CONCLUSIONS OF LAW

Civil No. C88-5429

Judge J.A. Rokich

The RENEWED MOTION FOR JUDGMENT OF CONTEMPT, dated May
16, 1990, and the ORDER TO SHOW CAUSE dated May 18, 1990,
directing defendant CALLAHAN as well as IONE CALLAHAN, LENA
BLOOMQUIST and DAVID VON MENDENHALL to appear and show cause why
each should not be held in contempt of court, all came before the

court for hearing on March 29, 1991. George K. Fadel appeared for and on behalf of defendant CALLAHAN as well as IONE CALLAHAN, LENA BLOOMQUIST and DAVID VON MENDENHALL, all of whom also appeared in person. The plaintiff EIMCO appeared by and through its Vice President Jerry Boyd and by and through its counsel, Thomas J. Rossa and David T. Berry. Having heard argument of counsel and having read the memoranda supplied by counsel and having heard the live testimony of witnesses and the persons ordered to appear, and having carefully considered all the evidence of record and the demeanor of the witnesses the court hereby enters the following:

FINDINGS OF FACT

A. Background

1. This is an action for injunctive relief and damages stemming from the defendants' unauthorized possession, use and disclosure of plaintiff's property including confidential and proprietary information of plaintiff.

2. This action was commenced on August 22, 1988. It was tried to the court sitting without a jury from October 3, 1989 to October 18, 1989. The court announced its decision on November 7, 1989. A stay evolving from bankruptcy proceedings undertaken by defendant G & G STEEL CORPORATION delayed further proceedings until April of 1990 when the bankruptcy proceedings were dismissed. Thereupon this matter resumed leading to the

entry of FINDINGS OF FACT AND CONCLUSIONS OF LAW dated March 15, 1991 and a FINAL JUDGMENT dated March 18, 1991.

3. At the outset of these proceedings the court issued a TEMPORARY RESTRAINING ORDER dated August 22, 1988 and a modification thereof identified as a MODIFIED TEMPORARY RESTRAINING ORDER and ORDER RE: REPLEVIN dated August 30, 1988. The two restraining orders restrained the defendants from transferring certain items such as drawings, blueprints, molds and the like.

4. During pretrial proceedings defendant Gerald A. CALLAHAN and defendant G & G STEEL CORPORATION were each served with a subpoena dated September 2, 1988 compelling the production of certain materials including EIMCO drawings and manuals.

5. On November 7, 1989 the court orally restrained the defendants including specifically GERALD CALLAHAN and later entered a written TEMPORARY RESTRAINING ORDER dated November 15, 1989 by which Gerald CALLAHAN and G & G STEEL CORPORATION were restrained from transferring, selling, giving away, disposing of, hiding . . . any and all of their non-exempt property and any and all property of defendant G & G STEEL CORPORATION" The court later entered a MODIFIED TEMPORARY RESTRAINING ORDER dated April 10, 1990 in which the TEMPORARY RESTRAINING ORDER of November 15, 1989 was modified to permit transfers to EIMCO from the defendants.

6. The plaintiff EIMCO filed a RENEWED MOTION FOR

JUDGMENT OF CONTEMPT dated May 16, 1990 renewing its earlier charge of contempt and seeking a ruling from the court thereon.

7. An EX PARTE MOTION FOR ORDER TO SHOW CAUSE dated May 16, 1990 was also filed by EIMCO pursuant to which the court issued the ORDER TO SHOW CAUSE of May 18, 1990 directing the defendant GERALD CALLAHAN and non-parties IONE CALLAHAN, LENA BLOOMQUIST and DAVID VON MENDENHALL to appear and show cause why they should not be held in contempt of court.

B. The Parties

1. Plaintiff Envirotech Corporation is a corporation of the State of Delaware doing business at 669 West 200 South, Salt Lake City, Utah, as EIMCO PROCESS EQUIPMENT COMPANY. The plaintiff is herein referred to as "EIMCO".

2. The defendant, GERALD A. CALLAHAN (herein CALLAHAN) resides at 928 East Chelsea Drive, Bountiful, Davis County, Utah.

3. The defendant, GLEN O. HANSEN (herein HANSEN), resides at 3219 Teton Drive, Salt Lake City, Salt Lake County, Utah.

4. The defendant, G & G STEEL CORPORATION (herein G & G STEEL) is a corporation of the State of Utah which had its principal place of business at 3575 South West Temple, Salt Lake County, Utah until April, 1990.

5. The party IONE CALLAHAN (hereinafter IONE) also

resides at 928 East Chelsea Drive, Bountiful, Davis County, Utah.

6. The party LENA BLOOMQUIST (hereinafter BLOOMQUIST) is a resident of Salt Lake County, State of Utah.

7. The party DAVID VON MENDENHALL (hereinafter VON MENDENHALL) is a resident of Salt Lake County, State of Utah.

8. In October 1982, CALLAHAN and HANSEN formed G & G STEEL.

9. G & G STEEL ceased business operations in December 1989.

10. IONE is the wife of CALLAHAN. IONE has served as the president and a director of G & G STEEL from its inception until December 1989 when she resigned. IONE is also a shareholder of G & G STEEL.

11. CALLAHAN was an officer and employee of G & G STEEL until he resigned in November 1989 sometime after November 7, 1989.

12. BLOOMQUIST and VON MENDENHALL were employees of G & G STEEL during 1988 and 1989 and terminated their employment at the end of December and the end of November respectively.

C. New Corporations

1. On or about November, 1989, CALLAHAN and IONE together with defendant GLEN O. HANSEN and his wife Joan Hansen formed G & G PRODUCTS INC. (G & G PRODUCTS), a Utah corporation.

2. CALLAHAN was an incorporator and an officer of

G & G PRODUCTS. IONE was president of G & G PRODUCTS. CALLAHAN and IONE were directors.

3. G & G PRODUCTS was formed to succeed to the business of G & G STEEL and was in the same business as G & G STEEL.

4. G & G PRODUCTS operated only a few weeks after which C-H INDUSTRIES, INC. was formed.

5. C-H INDUSTRIES, INC. (hereinafter C-H) was incorporated on or about November 29, 1989. IONE was and is the sole shareholder and president of C-H. CALLAHAN and IONE were initial directors.

6. C-H was formed to succeed to the business of G & G PRODUCTS and business of G & G STEEL and is the same business as G & G STEEL. It was formed so that CALLAHAN would have a job and could continue in the same business as that of G & G STEEL.

7. C-H hired VON MENDENHALL and BLOOMQUIST in January 1991, who were assigned to the same jobs and performed the same duties as they did as employees of G & G STEEL.

8. CALLAHAN has been an employee of C-H since it was established.

9. Over 80% of the customers of C-H were customers of G & G STEEL.

10. C-H took over most of the uncompleted contracts of G & G STEEL.

11. C-H succeeded to the business of G & G STEEL,

selling substantially similar products to substantially the same customers as G & G STEEL.

12. C-H and G & G PRODUCTS did not compensate G & G STEEL for any of the business acquired from G & G STEEL.

13. CALLAHAN, with the assistance of IONE, caused the business of G & G STEEL to be transferred to C-H without compensation to G & G STEEL.

14. C-H was formed by and for CALLAHAN and for the purpose of avoiding the orders of this court and to avoid the judgments of this court. C-H is the alter ego of CALLAHAN.

D. Knowledge

1. At all times pertinent hereto CALLAHAN, IONE, BLOOMQUIST and VON MENDENHALL knew of the TEMPORARY RESTRAINING ORDER of November 1989 ('89 TRO) and the MODIFIED TEMPORARY RESTRAINING ORDER of April, 1990 ('90 TRO) and that transfer of the G & G STEEL assets was thereby prohibited.

2. Neither CALLAHAN, IONE, BLOOMQUIST or VON MENDENHALL sought advice of counsel regarding the permissible scope of activity under the '89 TRO and '90 TRO.

3. Neither CALLAHAN, IONE, BLOOMQUIST or VON MENDENHALL sought guidance of the court regarding the permissible scope of activity under the '89 TRO and '90 TRO.

4. CALLAHAN, IONE, BLOOMQUIST, and VON MENDENHALL knew that C-H was being set up to do what each believed could not

be done through or by G & G STEEL.

E. Financial Testimony

1. During the course of the trial in October 1989, the following dialogue between the court and defendant CALLAHAN took place:

The Court	What do you make at G & G?
Mr. Callahan	My salary is a thousand dollars a month, plus I get paid based on sales.
The Court	I saw that it was a thousand dollars a month, but how much did you make last year?
Mr. Callahan	About \$60,000.
The Court	How much?
Mr. Callahan	About \$60,000.

2. CALLAHAN in fact made over \$100,000.00 for the year in question and has now so admitted.

3. At the trial, CALLAHAN testified as to his assets stating that he had no substantial savings accounts or other personal assets of consequence.

4. At the time of trial CALLAHAN had an account with over \$30,000.00 in cash remaining after receiving a bonus payment of \$42,000.00 a few weeks before trial.

5. The court relied on the testimony of CALLAHAN.

6. The court was misled by the testimony of CALLAHAN regarding his assets and his income.

F. Fine

1. The plaintiff EIMCO has been damaged by the conduct of CALLAHAN to the extent that EIMCO expended time and effort to find the true facts and to bring this matter to the attention of the court and that EIMCO was frustrated in its proofs at trial.

2. CALLAHAN deliberately misled the court regarding his income and assets and has exhibited disregard for the court and its orders which disregard is contemptuous.

3. CALLAHAN should be fined in the amount of \$5,000.00 which sum should be paid to plaintiff.

4. The plaintiff EIMCO has also expended fees for its attorneys to advance this matter before the court.

CONCLUSIONS OF LAW

1. The court has jurisdiction over the defendant CALLAHAN and over the non-party individuals IONE, VON MENDENHALL and BLOOMQUIST.

2. Any finding of fact heretofore made which is a conclusion of law shall be so deemed; and any conclusion of law hereinafter set forth which is a finding of fact or ultimate fact shall be so deemed.

3. CALLAHAN and IONE founded G & G PRODUCTS and C-H INDUSTRIES and have transferred substantial assets of G & G STEEL thereto.

4. C-H INDUSTRIES, INC. and G & G PRODUCTS, INC. are the alter ego of CALLAHAN, having been founded and operated as a subterfuge to evade the orders of this court.

5. The evidence is clear and convincing that CALLAHAN deliberately misled the court as to his assets and his earnings.

6. The evidence is clear and convincing that CALLAHAN obviated and circumvented the TEMPORARY RESTRAINING ORDER of November 14, 1989 and the MODIFIED TEMPORARY RESTRAINING ORDER of April 1990 by creating first G & G PRODUCTS and then C-H INDUSTRIES INC. and transferring the business of G & G STEEL through G & G PRODUCTS to C-H INDUSTRIES, INC., thereby doing what he was restrained from doing.

7. CALLAHAN is in contempt of this court under the provision of Utah Code Annotated § 78-31-1 (4) and (5).

8. CALLAHAN should be fined and pay to plaintiff the sum of FIVE THOUSAND DOLLARS (\$5,000.00) pursuant to Utah Code Annotated § 78-32-11.

9. CALLAHAN should pay to plaintiff all of plaintiff's attorneys' fees and costs attendant hereto; and plaintiff should submit a bill of fees and costs attendant hereto.

10. To purge himself of CONTEMPT, CALLAHAN should

forthwith transfer to the plaintiff all of the assets of C-H INDUSTRIES, INC.

11. The court elects to make no ruling on the renewed MOTION FOR CONTEMPT dated May 16, 1990.

12. It has not been clearly and convincingly shown that IONE, BLOOMQUIST and VON MENDENHALL are in contempt of this court.

DATED this 9 day of JULY 1991.

BY THE COURT

S/ John A. Rokich
Honorable John A. Rokich
District Judge

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IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE

ENVIROTECH CORPORATION, a :
Delaware corporation, d/b/a :
EIMCO PROCESS EQUIPMENT :
COMPANY, :
Plaintiff, : TEMPORARY RESTRAINING
v. : ORDER
: Civil No. C88-5429
G & G STEEL CORPORATION, :
a Utah corporation, GERALD :
A. CALLAHAN, an individual, : Judge J.A. Rokich
GLEN O. HANSEN, an individual, :
Defendants. :

This matter came before the court on November 7, 1989 at which time the court announced its decision on the trial in the above identified matter. Thereafter the plaintiff by and through its counsel, Thomas J. Rossa and David T. Berry, moved the court for a Temporary Restraining Order consistent with the court's decision all pending preparation and entry of detailed findings of fact, conclusions of law and a final judgment. The defendants were represented by and through their counsel George

K. Fadel and Richard F. Bojanowski.

The court ruled on November 7, 1989 from the bench restraining the defendants as stated on the record. The parties were thereafter unable to agree to a written order so the matter again came before the court on November 14, 1989. The plaintiffs were represented by Thomas J. Rossa and David T. Berry. The defendants were represented by George K. Fadel and Richard F. Bojanowski. Defendants, Gerald A. Callahan and Glen O. Hansen were also personally present in court. Based on the further presentation of the counsel, the court does now therefore:

ORDER that:

1. Plaintiff's oral motion for a temporary restraining order be and the same is hereby granted as hereinafter set forth.

2. The defendants, Gerald A. Callahan and Glen O. Hansen, separately and together, and also together with all those in active consort or participation therewith who receive actual notice hereof by personal service or otherwise, be and the same are hereby restrained from transferring, damaging, selling, giving away, disposing of, hiding or shipping, in any and all ways, any and all of their non exempt property and any and all property of the defendant, G & G Steel Corporation, both personal and real, including, but not limited to, the stock of defendants Callahan and Hansen in defendant, G & G Steel Corporation, until entry of the final judgment herein, except defendants, Callahan and Hansen may make dispersements in payment of ordinary and

regular household and business expenses only to the extent such defendant is personally liable therefor.

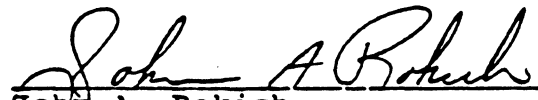
3. The defendants, Gerald A. Callahan and Glen O. Hansen, separately and together, and also together with all those in active consort or participation therewith receiving actual notice hereof by personal service or otherwise including their attorneys, agents and representatives, be and the same are hereby restrained from:

- a. Using any EIMCO detail drawing now in the possession of G & G Steel, defendant Gerald A. Callahan and defendant Glen O. Hansen.
- b. Making, using, shipping or selling any part, article, tool, mandrel, mold, form, casting, tooling, subassembly, component, assembly or item made in whole or in part, for any machine made or sold by plaintiff from any existing G & G detail drawing unless and except it has been shown by the defendants by ^{preponderance of the} ~~clear and convincing~~ evidence already of record and admitted at the trial heretofore had from October 3, to 19, 1989 that a particular existing G & G detail drawing was in fact made other than by reference to an EIMCO detail drawing. -
- c. Seeking EIMCO detail drawings from former EIMCO employees, from retired EIMCO employees and from EIMCO vendors except and to the extent they are

offered by the vendor without solicitation by, for
or on behalf of the defendants.

DATED this 15 day of November, 1989.

BY THE COURT


John A. Rokich
District Court Judge

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DATE 8-6-91 TIME 1:51
B/R 4226 S. Main
UPON James E. Rossa
SINDT-DEPUTY CONSTABLE 801 COUNTY, UTAH
James E. Rossa DEPUTY

Attorneys for Plaintiff

IN THE THIRD JUDICIAL DISTRICT COURT
IN AND FOR THE COUNTY OF SALT LAKE

ENVIROTECH CORPORATION, a
Delaware corporation, d/b/a
EIMCO PROCESS EQUIPMENT
COMPANY,

Plaintiff,

v.

G & G STEEL CORPORATION,
a Utah corporation; GERALD
A. CALLAHAN, an individual;
GLEN O. HANSEN, an individual,

Defendants.

WRIT OF EXECUTION

Civil No. C88-5429

Judge J.A. Rokich

TO THE STATE OF UTAH:

To the Sheriff or Constable of Salt Lake County, State
of Utah, Greetings:

WHEREAS, Judgment was rendered by this Court in said
County, wherein is the judgment roll, on the 18th day of March,
1991 for the sum of \$1,459,085.23 and \$22,863.56 cost of suit and

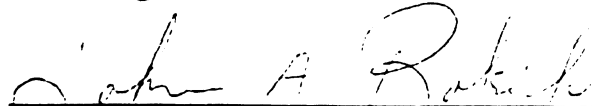
the amount actually due thereon is \$1,481,951.79 and interest at the rate of eight percent per annum from the 19th day of March, A.D. 1991, until paid against said defendant Gerald A. Callahan and in favor of said plaintiff Envirotech Corporation, d/b/a Eimco Process Equipment Company;

WHEREAS, Judgment of Contempt was rendered by this court in said County, wherein is the judgment roll, on the 9th day of July 1991 adjudicating defendant Gerald A. Callahan to be in contempt of this court, further ordering defendant Gerald A. Callahan pay to plaintiff Envirotech Corporation, dba EIMCO Process Equipment Process Equipment Company the sum of \$5,000.00 as a fine for his contemptuous conduct, and ordering the transfer of all the assets of C-H Industries, Inc. to plaintiff Envirotech Corporation, d/b/a Eimco Process Equipment Company, such that the defendant Gerald A. Callahan may be purged of his contempt;

THESE ARE, THEREFORE, to command you to collect the aforesaid judgments and costs, together with the cost of this execution, and that you immediately transfer all the assets of C-H Industries, Inc., including but not limited to all inventory, accounts receivable, customers, customer lists, installation lists, application lists, research and production reports, executory contracts, work(s) in progress, furniture, hardware, all actual drawings in the possession of C-H Industries, Inc. and all or any agents, distributors, representatives, vendors, suppliers or attorneys or either or both of them, in whatever form or medium such may exist, all computer information from which any such C-H Industries, Inc. drawing may be prepared,

whether such does not reside in a computer or in related storage disc, tape or the like and all molds, mandrels, forms, casting tools, tooling and the like, and all parts and components made from such C-H Industries, Inc. drawings all to plaintiff Envirotech Corporation d/b/a Eimco Process Equipment Company to be valued and applied to satisfaction of the Judgment herein and this shall be your sufficient warrant for so doing. And within sixty (60) days make due returns for this writ with your doings in the premises hereon endorsed.

WHEREOF FAIL NOT.

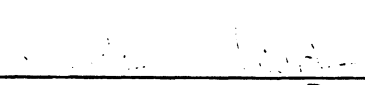
8-6-1991


Judge John A. Rokich
Third District Court Judge

Given under my hand and Seal of said Court this ____ day
of _____, 1991.

THOMAS J. LUDWIG

Clerk



Deputy Clerk